

## STATE SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement and Release (“Agreement”) is entered into between the State of Michigan (“the State”) and IVAX Pharmaceuticals, Inc. and IVAX Corporation (both IVAX entities referred to herein as (“IVAX”)), through their authorized representatives, hereinafter collectively referred to as “the Parties.”

### II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. IVAX is a Florida corporation with headquarters in Weston, Florida. IVAX manufactures generic drugs. IVAX was formerly known as Zenith Goldline Pharmaceuticals, Inc. In 2006, IVAX became an indirect subsidiary of another generic manufacturer, Teva Pharmaceuticals Industries, Ltd., an Israeli entity.

B. IVAX is a defendant in the *qui tam* action *United States et al. ex rel. David M. Kammerer v. Omnicare, Inc., IVAX Pharmaceuticals, PurePac Pharmaceutical Co., SANDOZ Inc., and Watson Pharma, Inc.*, Civil Action No. 05-11519-RGS (D. Mass.) (hereinafter “Civil Action”).

C. IVAX has entered into a separate civil settlement agreement (the “Federal Settlement Agreement”) with the United States (as that term is defined in the Federal Settlement Agreement).

D. The State contends that IVAX caused the submission of claims for payment to the State’s Medicaid Program (Medicaid), 42 U.S.C. §§ 1396-1396(v).

E. The State contends that it has certain civil and administrative causes of action against IVAX for knowingly engaging in the following conduct (hereinafter referred to as "the Covered Conduct): pursuant to a contract providing for Omnicare, Inc. ("Omnicare") to purchase certain IVAX pharmaceutical products, IVAX made payments to Omnicare in violation of the federal anti-kickback statute, 42 U.S.C. § 1320a-7b(b)(2), thereby causing Omnicare to submit false or fraudulent drug reimbursement claims to Medicaid from January 2000 through June 2004.

F. This Agreement is neither an admission of facts or liability by IVAX nor a concession by the State that its claims are not well-founded. IVAX expressly denies the contentions of the State as set forth herein and in the Civil Action and further denies any liability or wrongdoing related to those contentions.

G. To avoid the delay, expense, inconvenience and uncertainty of protracted litigation of these claims, the Parties mutually desire to reach a full and final settlement as set forth below.

### **III. TERMS AND CONDITIONS**

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. IVAX agrees to pay to the United States and the Medicaid Participating States, collectively, the sum of fourteen million dollars (\$14,000,000), which may be adjusted depending on the number of Medicaid Participating States, plus interest accrued thereon at a rate of 3.25% per annum from June 26, 2009 and continuing until and including the day before

complete payment is made (the "Settlement Amount"). The Settlement Amount shall be paid as follows:

(a) IVAX shall pay to the United States the sum of Seven Million Five Hundred Sixty Six Thousand One Hundred One dollars (\$7,566,161), plus interest accrued thereon at a rate of 3.25% per annum (\$674 per day) from June 26, 2009 and continuing until and including the day before complete payment is made (the "Federal Settlement Amount"). IVAX agrees to pay the Federal Settlement Amount to the United States by electronic funds transfer pursuant to written instructions agreed to by the United States and IVAX. IVAX agrees to make this electronic funds transfer no later than seven business days after the Effective Date of the Federal Settlement Agreement.

(b) IVAX shall pay to the Medicaid Participating States the sum of Six Million Four Hundred Thirty Three Thousand Eight Hundred Thirty Nine dollars (\$6,433,839), which may be adjusted depending on the number of Medicaid Participating States, plus interest accrued thereon at a rate of 3.25% per annum (\$573 per day, which may be adjusted depending on the number of Medicaid Participating States) from June 26, 2009 and continuing until and including the day before complete payment is made (the "Medicaid State Settlement Amount"), under the terms and conditions of the Medicaid State Settlement Agreements. This Medicaid State Settlement Amount shall be paid by electronic funds transfer pursuant to written payment instructions from the National Association of Medicaid Fraud Control Units ("NAMFCU") negotiating team for the Medicaid Participating States. Payment shall be made to the Medicaid Participating States no later than seven (7) business days after IVAX receives written

payment instructions from the NAMFCU and following the earliest of the dates on which the following occurs:

(i) the individual Medicaid State Settlement Agreements from the Medicaid Participating States are fully executed by the States and delivered to IVAX's attorneys; or

(ii) as otherwise agreed in writing by IVAX's attorneys and the NAMFCU team.

(c) States which execute a Medicaid State Settlement Agreement in the form to which IVAX and the NAMFCU team have agreed, or in a form otherwise agreed to by IVAX and an individual State, shall be defined as "Medicaid Participating States."

Absent IVAX's consent, no State may become a Medicaid Participating State if it has not executed a Medicaid State Settlement Agreement within 60 days of receipt.

(d) The total portion of the Settlement Amount paid by IVAX in settlement for the Covered Conduct to the State is \$434,290.69, consisting of a portion paid to the State under this Agreement and another portion paid to the Federal Government as part of the Federal Settlement Agreement. The individual portion of the Medicaid State Settlement Amount allocated to the State under this Agreement is the sum of \$192,213.25, plus applicable interest.

2. Contingent upon the receipt of the Medicaid State Settlement Amount, the Medicaid Participating States agree to pay, as soon as feasible after such receipt, an agreed-upon amount that has been addressed via a side letter to the Relator in the Civil Action.

3. Subject to the exceptions in Paragraph 5 below, and in consideration of the obligations of IVAX, conditioned upon receipt by the State of its share of the Medicaid State

Settlement Amount, the State, on behalf of itself, and its officers, agents, agencies, political subdivisions and departments, agrees to dismiss the Civil Action with prejudice and to fully and finally release IVAX, its predecessors and current and former direct and indirect parents, divisions, subsidiaries, successors, transferees, heirs, and assigns (collectively, the "IVAX Releasees") from any civil or administrative monetary cause of action that the State has for any claims that the IVAX Releasees caused to be submitted to the State Medicaid Program for the Covered Conduct.

4. The State does not agree to release individuals from claims it has or may have for the Covered Conduct, except that, if any present or former IVAX officers, directors, or employees are legally entitled to repayment, or advancement of expenses, from IVAX, for indemnification, contribution, reimbursement or otherwise as a result of a claim brought by the State for the Covered Conduct, the release provided in Paragraph 3 shall apply to such individuals with respect to that claim.

5. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities: (a) any criminal, civil or administrative claims arising under state revenue codes; (b) any criminal liability; (c) any civil liability that IVAX has or may have under any state statute, regulation, or rule not expressly covered by this Agreement, including, but not limited to any civil liability for state antitrust violations; any liability for claims involving unfair and/or deceptive acts and practices; any liability under the State's consumer protection laws which any person or entity has or may have to individual consumers or state program payors other than the Medicaid Program; (d) any liability to the State (or any agencies thereof) for any conduct other than the Covered Conduct; (e) any liability based upon obligations created by this Agreement; (f) except as explicitly stated

in this Agreement, any administrative liability, including mandatory exclusion from the State's Medicaid program; (g) any express or implied warranty claims or other claims for defective or deficient products and services provided by IVAX; (h) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; (i) any liability based on a failure to deliver items or services due; (j) any liability which may be asserted by private payors or insurers, including those that are paid by a state's Medicaid program on a capitated basis; or (k) any liability related to the improper inflation of Average Wholesale Prices and Wholesale Acquisition Cost.

6. In consideration of the obligations of IVAX set forth in this Agreement, and the Corporate Integrity Agreement ("CIA") that IVAX has entered into with the Office of the Inspector General of the United States Department of Health and Human Services ("HHS-OIG") in connection with this matter, and conditioned on receipt by the State of its share of the State Medicaid Settlement Amount, except as reserved in Paragraph 5 above, the State agrees to release and refrain from instituting, recommending, directing or maintaining any administrative claim or any action seeking exclusion from the State's Medicaid program against the IVAX Releasees for the Covered Conduct. Nothing in this Agreement precludes the State from taking action against IVAX in the event that IVAX is excluded by the federal government, or for conduct and practices other than the Covered Conduct, or as a result of conviction of IVAX in a criminal action.

7. IVAX waives and shall not assert any defenses it may have to criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause of the Fifth Amendment of the

Constitution, or the Excessive Fines Clause of the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

8. In consideration of the obligations of the State set forth in this Agreement, IVAX waives and discharges the State, its agencies, political subdivisions, employees, servants and agents from any claims (including attorneys' fees, costs and expenses of every kind and however denominated) which IVAX has asserted, could have asserted or may assert in the future against the State, its agencies, political subdivisions, employees, servants and agents, arising from the State's investigation and prosecution of the Covered Conduct.

9. The amount that IVAX must pay to the State pursuant to Paragraph 1 above will not be decreased as a result of the denial of claims for payment now being withheld from payment by the State's Medicaid program, or any other state payor, for the Covered Conduct; and IVAX agrees not to resubmit to the State's Medicaid program or any other state payor any previously denied claims, which denials were based on the Covered Conduct, and agrees not to appeal or cause the appeal of any such denials of claims.

10. IVAX shall not seek payment for any of the claims for reimbursement to Medicaid covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals or third party payors.

11. IVAX agrees to the following, to the extent applicable:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47, in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh and 1396-1396v, and in the regulations and official program directives promulgated thereunder) incurred by or on behalf of IVAX and its present or former

officers, directors, employees, shareholders and agents in connection with the following shall be “Unallowable Costs” on government contracts and under the State Medicaid Program:

- (1) the matters covered by this Agreement;
- (2) the United States’ and Participating States’ audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) IVAX’s investigation, defense, and corrective actions undertaken in response to the United States’ and Participating States’ audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys’ fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payments IVAX makes to the United States and Participating States’ pursuant to this Agreement and any payments that IVAX may make to the Relator, including costs and attorneys’ fees; and
- (6) the negotiation of the CIA, and the performance of obligations undertaken pursuant to the CIA to:
  - (i) retain an independent review organization to perform annual reviews as described in Section III of the CIA; and
  - (ii) prepare and submit reports to HHS-OIG.

However, nothing in this paragraph III. 11. (a) (6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to IVAX. (All costs described or set forth in this Paragraph III.11.(a) (6) are hereafter “Unallowable Costs.”)



(b) Future Treatment of Unallowable Costs: These Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by IVAX, and IVAX shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by IVAX or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: IVAX further agrees that, within 90 days of the Effective Date of this Agreement, it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs included in payments previously sought from the United States or any State Medicaid program, including but not limited to payments sought in any cost reports, cost statements, information reports or payment requests already submitted by IVAX or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. IVAX agrees that the State, at a minimum, shall be entitled to recoup from IVAX any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously submitted cost reports, information reports, cost statements or requests for payment.

Any payments due after the adjustments have been made shall be paid to the State pursuant to the direction of the affected agencies. The State reserves its rights to disagree with any calculations submitted by IVAX or any of its subsidiaries or affiliates on the effect of

inclusion of Unallowable Costs on IVAX or any of its subsidiaries' cost reports, cost statements or information reports.

(d) Nothing in this Agreement shall constitute a waiver of the rights of the State to audit, examine or re-examine IVAX's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

12. IVAX warrants that it has reviewed its financial condition and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(B)(ii)(I), and shall remain solvent following payment of the Settlement Amount under the Federal Settlement Agreement and the Agreements with the Medicaid Participating States. Further, the Parties warrant that, in evaluating whether to execute this Agreement, the Parties (a) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to IVAX within the meaning of 11 U.S.C. § 547(c)(1), and (b) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

13. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

14. Except as expressly provided to the contrary in this Agreement, each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

15. Except as otherwise stated in this Agreement, this Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

16. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of the State's revenue code or Internal Revenue laws.

17. In addition to all other payments and responsibilities under this Agreement, IVAX agrees to pay all reasonable travel costs and expenses of the NAMFCU Negotiating Team. IVAX will pay this amount by separate check or wire transfer made payable to the National Association of Medicaid Fraud Control Units after the Medicaid Participating States execute their respective Agreements or as otherwise agreed by the Parties.

18. This Agreement is governed by the laws of the State.

19. The undersigned IVAX signatories represent and warrant that they are authorized as a result of appropriate corporate action to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

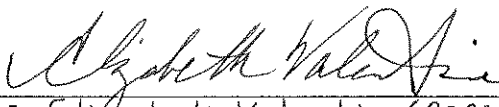
20. The "Effective Date" of this Agreement shall be the date of signature of the last signatory to this Agreement. Facsimiles of signatures and/or electronic signatures in portable document format (.pdf) shall constitute acceptable binding signatures for purposes of this Agreement.

21. This Agreement shall be binding on all successors, transferees, heirs and assigns of the Parties.

22. This Settlement Agreement constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties.


23. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same Agreement.


STATE OF MICHIGAN

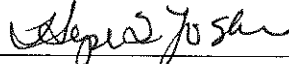
By:  Dated: 12/10/09  
[Name] Elizabeth Valentine (P28872)  
[Title] Assistant Attorney General  
OFFICE OF THE ATTORNEY GENERAL

By:  Dated: 12/7/09  
[Name] Stephen Fitton  
[Title] Acting Medicaid Director  
Medicaid Program: Michigan Department of Community Health

IVAX PHARMACEUTICALS, INC.

By:  Dated: 2/4/10  
Name: Deborah Griffin  
Title: Vice President and CFO, Ivax Pharmaceuticals, Inc.

By:  Dated: 2/4/10  
Name: David Stark  
Title: Vice President and General Counsel, Teva North America

By:  Dated: 2/7/10  
Counsel to IVAX Pharmaceuticals, Inc.

LEGAL AFFAIRS  
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